No. 82-1133

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PILAR LOWENTHAL, JEAN ARTHUR LOWENTHAL, JR. AND MARIA LORETO LOWENTHAL,
Appellants,

v.

MORTON E. ROME, SURVIVING PERSONAL REPRESENTATIVE OF THE ESTATE OF JEAN ARTHUR LOWENTHAL, AND ROLF LINDNER,
Appellees.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Personal Representative
of the Estate of
Jean Arthur Lowenthal.

QUESTIONS PRESENTED

I.

Does not Section 1-202 of the Estates and Trust Article of the Annotated Code of Maryland bar the claim of the Appellant as a surviving spouse of the Decedent?

II.

Under the facts of this case, does Maryland's recognition of the decision of the Highest Court in Spain, that there was no valid marriage between the Appellant and the Decedent, violate any rights of the Appellant who is a citizen of Spain and has always been a resident of Spain?

III.

Is not the Appellant barred by estoppel and/or laches in attacking the annulment decree of the Highest Court of Spain and in attempting to request United States Courts not to recognize the annulment?

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CONCISE STATEMENT OF THE CASE

Jean Arthur Lowenthal was born in Baltimore, Maryland and was an American citizen. Mr. Lowenthal, while living in Malaga, Spain (but married to a woman in Baltimore), met Maria del Pilar San Jose De Los Heros (the "Appellant") and in 1958 and 1959, the Appellant became the mother of two children of which Jean Arthur Lowenthal was apparently the father. The Appellant has been a citizen and resident of Spain during her entire life and has never been a citizen or resident of any other country.

On August 5, 1959, the Circuit Court No. 2 of Baltimore City terminated the previous marriage of Jean Arthur Lowenthal and granted a divorce a vinculo matrimonii to his first wife. On August 25, 1959, Jean Arthur Lowenthal and the Appellant went through a marriage ceremony in the City of Gibraltar. The Appellant and the Decedent lived together in Malaga, Spain until early

in 1961 when the Appellant and her two children moved out of the residence which was owned by the Decedent and, thereafter, she occupied a separate residence in Malaga.

On March 22, 1966, Princess Anna Margaretha Bernadotte of Sweden and Jean Arthur Lowenthal were married in London, England and they lived in the residence in Spain until Anna's death in 1975.

After the separation of the Decedent and the Appellant, the Decedent instituted proceedings for annulment of his marriage with the Appellant in the trial courts of Malaga, Spain. The Appellant had notice of this annulment proceeding and was represented by Spanish lawyers of her own choice throughout the entire annulment proceedings, which included a trial court in Malaga, the appellate court in Granada and the Supreme Court in Madrid where finally, the annulment of the marriage was affirmed by the highest court of Spain, the Supreme Court of Spain,

on July 5, 1956.

The Appellant later instituted proceedings for alimony against the Decedent; based upon the annulment decision; however, a decision of the Trial Court in Malaga, Spain, affirmed by the Intermediate Court in Granada and, finally, by the Supreme Court of Spain in 1967 found that the Appellant was not entitled to support because of the annulment decision of July 5, 1965.

The Decedent died in London, England on June 19, 1977 and his estate is subject to administration before the Orphans' Court of Baltimore City. The Appellant filed a Renunciation and Election with the Orphans' Court, claiming that she was the surviving spouse of the Decedent and that under the laws of the State of Maryland, she was entitled to a share of the estate.

Pursuant to an Order of Court dated August 7, 1981, the Orphans' Court of Baltimore City found that the Renunciation

and Election filed by the Appellant on September 15, 1977 with the Orphans' Court of Baltimore City was void and of no effect because the marriage of the Appellant and the Decedent was annulled by the decision of the Supreme Court of Spain dated July 5, 1965. On September 4, 1981, the Appellant filed an Order of Appeal to the Court of Special Appeals of Maryland. On January 22, 1982, the Appellant filed a Petition for Writ of Certiorari with the Court of Appeals of Maryland. The Petition for Writ of Certiorari was granted and the Writ was issued to the Court of Special Appeals of Maryland. The Maryland Court of Appeals found that the Appellant was not the surviving spouse and that therefore her election to take against the Will of Jean Arthur Lowenthal was void and of no effect, pursuant to an Opinion and Order of the Maryland Court of Appeals dated Setpember 3, 1982. On October 2, 1982 the Appellant filed with the Maryland Court of

Appeals a Motion for Reconsideration and Request for Stay of Mandate which was denied by the Maryland Court of Appeals on October 4, 1982. On January 4, 1983 the Appellant filed with the Supreme Court of the United States a Petition for Writ of Certiorari. This Brief is filed in opposition to the Petition for Writ of Certiorari.

ARGUMENT

The Appellant respectfully suggests that it would not be in order for this Court to exercise its discretion in favor of hearing and deciding this case.

I.

THE ISSUES PRESENTED BY THE PETITION FOR WRIT OF CERTIORARI ARE NOT SUFFICIENTLY IMPORTANT TO WARRANT THIS COURT'S ATTENTION.

It is not enough for the Petitioner to observe that the legal status of her marriage to the Decedent has "not been, but should be, settled by this Court". There is no reason why it should be. The fact

that a given question has not been resolved by the Supreme Court is not a recognized basis for the grant of certiorari.

The issue in the present case is most unlikely ever to recur and is too narrow to warrant review by this Court on certiorari. It can only arise in those few cases where Spanish courts granted annulments of marriages on religious grounds prior to 1978.

The only real questions that the Appellant raises in her Petition turn on the particular facts of this case and are of interest only to the parties in this proceeding. In essence, the Petition is asking this Court to make another review of the lengthy trial record to see if it can find what other courts have been utterly unable to find - proof that the Appellant's appearance before Spanish courts was not voluntary and proof that non-recognition of the Appellant as the surviving spouse of the

Decedent violates the United States Constitution. This Court has indicated that "we do not grant a certiorari to review evidence and discuss specific facts". United States v. Johnson, 268 US 220, 227 (1925). In the present case the Petitioner raises only questions turning entirely on the facts of this case, already resolved by other courts in favor of the Appellee, and without any impact outside the limits of this case.

II.

THE DECISION OF THE MARYLAND COURT OF APPEALS GAVE CONSIDERATION TO THE ISSUES AND DECIDED THEM CORRECTLY.

The decision of the Maryland Court of Appeals turned on state law and the interpretation by the Maryland Court of Section 1-202 and Section 3-203 of the Estates and Trusts Article of the Annotated Code of Maryland. The Maryland Court of Appeals found that the Petitioner had appeared before the Spanish courts, that she was not

compelled "under any kind of penalties such as exposure to being held in contempt of court and subject to incarceration", "that it was Appellant's burden to prove what the Spanish law in this respect was and "such proof being absent", Lowenthal v. Rome, 294 Md. 277, 283, 449 A.2d. 441 (1982), the Petitioner had a choice of whether or not to appear in the Spanish courts and that she chose to appear and exercise her free will and therefore voluntarily appeared in the Spanish courts with her own attorney representing her. Accordingly, the appearance having been voluntary, and the marriage having been annulled, the Petitioner is not the surviving spouse of the Decedent and has no claim at all against the estate of the Decedent. Moreover, the case having been decided upon state law, certiorari should be denied.

III.

EVEN IF THE PROVISIONS OF MARYLAND LAW DEALING WITH "VOLUNTARY APPEARANCE" ARE NOT CONTROLLING, UNDER THE FACTS OF THIS

CASE, THERE IS NO POLICY WHICH REQUIRES THE MARYLAND COURT NOT TO RECOGNIZE THE ANNULMENT DECREE OF THE SUPREME COURT OF SPAIN.

The landmark case dealing with the recognition of foreign judgments indicates that as to judgments of courts of foreign countries, there is no constitutional requirement of recognition - it is a matter of comity. Hilton v. Guyot, 16 SC 139 (1895). With respect to the recognition of foreign judgments, this Court indicated, in Hilton p. 159 "...it should be held conclusive upon the merits tried in the foreign court, unless special ground is shown for impeaching the judgment as by showing that it was affected by fraud or prejudice, or that by principles of international law, and by the comity of our own country, it should not be given full credit and effect".

The Restatement (Second) of Conflicts of Laws, Sections 98, 117, 283 and 286 sets forth the rules to be applied by courts in

determining whether a foreign judgment should be recognized and Comment C to Section 117 indicates that with respect to public policy, "the fact that suit on the original claim could not have been maintained in a state of the United States does not mean that a judgment rendered on a claim in a foreign nation will necessarily be refused enforcement by the courts of that state", and, the reporter's note to Comment C indicates that "the modern cases indicate that courts of a state of the United States will frequently enforce a judgment rendered in a foreign nation although they would have refused to entertain suit on the original claim on grounds of public policy".

Although it is obvious that the United States Constitution does set the public policy of the states of this Country, even in cases where the enforcing state determines that there is a public policy question, there are numerous cases where the foreign judg-

ment has been recognized such as Cooley v. Weinberger, 398 F Supp. 479 (D Oklahoma) aff'd 518 F 2d. 1151 (10th 1974) where in a murder case in Iran, the Plaintiff was not afforded the same facets of due process as she would have been had she been tried for murder in the United States; Chaudry v. Chaudry, 159 NJ Super 566, 388 A.2d. 1000 (1978), where a Pakistan divorce and anti-nuptial agreement were upheld even though it violated New Jersey law; and Greschler v. Greschler, 51 NY 2d. 368, 414 NE 2d. 694, 434 NYS 2d. 194 (1980), where a Dominican Republic divorce decree was enforced by New York courts even though the appearance in the foreign court was only by power of attorney. Accordingly, the Petitioner, who is a Spanish citizen and has never ever been a resident of the United States, has not demonstrated any public policy or constitutional ground of such importance as to require this Court to hear this case.

IV.

THE APPELLANT IS BARRED BY ESTOPPEL AND/OR LACHES UNDER THE LAW OF THE STATE OF MARYLAND FROM ATTACKING THE ANNULMENT DECREE OF THE SUPREME COURT OF SPAIN.

Under Maryland law, equitable estoppel is the effect of the voluntary conduct of a party whereby he or she is absolutely precluded, both at law and in equity, from asserting rights which may have otherwise existed against another person who has in good faith relied upon such conduct, and laches involves such neglect or omission to assert a right as taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, operates as a bar to enforcement of a claim. Fitch v. Double U Sales Corp., 212 Md. 324, 338, 129 A.2d. 939 (1957), Boehm v. Boehm, 182 Md. 254, 34 A.2d. 447 (1943). Where one, knowing his rights, takes no step to enforce them until the condition of the other party has in good faith become so changed that he

cannot be restored to his former status if the right be then enforced, the delay operates as an estoppel against the assertion of the right, Bradley v. Cornwall, 203 Md. 28, 98 A.2d. 280 (1953) and Pryor v. Pryor, 240 Md. 224 (1964).

After the annulment of the marriage in 1965, the Decedent lived with his third wife in the same community as the Petitioner, and the Decedent and his third wife held themselves out as a married couple and conducted themselves as such both in Spain and abroad, both with relatives and friends. To now suggest that the annulment is invalid, or should not be recognized, will have the effect of making the Decedent a bigamist and such action would also thwart the obvious estate plans of Jean Arthur Lowenthal, plans of his relatives and the feelings and plans of the heirs of his deceased third wife. The Petitioner never made an attempt to attack the annulment of her marriage to Jean

Arthur Lowenthal either in Spain or in the United States in the entire twelve year period after the annulment of the marriage until after the death of Jean Arthur Lowenthal. To allow her to do so at this time would cause obvious injury to many concerned people.

CONCLUSION

This case involves issues of state law dealing with domestic relations and estate administration. The case was decided fairly and correctly by the Maryland Court of Appeals. It is inconceivable that there will be many other cases arising under the same set of facts. This case does not justify the issuance of the Writ of Certiorari. Accordingly, it is respectfully suggested that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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I HEREBY CERTIFY that on this 2nd day of February, 1983, a copy of the foregoing Brief In Opposition To Petition For Writ Of Certiorari was mailed to John D. Alexander, Jr., Esquire and William T. Kerr, Esquire, Thieblot & Alexander, Fourth Floor, The World Trade Center, Baltimore, Maryland 21202 and Ronald A. Silkworth, Esquire, 425 St. Paul Place, Baltimore, Maryland 21202.

Stephen C. Winter